

BOARD OF APPEALS CASE NO. 4845	*	BEFORE THE
APPLICANT: Bell Atlantic Mobile Systems	*	ZONING HEARING EXAMINER
REQUEST: Variance to amend Condition No. 2 in Case No. 3120 to allow tower to be setback less than 10 feet plus the tower height; 825 Earlton Road, Havre de Grace	*	OF HARFORD COUNTY
	*	Hearing Advertised
HEARING DATE: November 9, 1998	*	Aegis: 9/23/98 & 9/30/98
	*	Record: 9/25/98 & 10/2/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Bell Atlantic Mobile Systems, Inc. (hereinafter "Bell"), is requesting an amendment to Condition No. 2 as set forth in Board of Appeals Case No. 3120, to allow a communication tower to be setback from the property line less than the required 10 feet plus the height of the tower (164.5 feet required, 144.2 feet existing) in an Agricultural District.

The subject property is located at 825 Earlton Road, Havre de Grace, Maryland 21078 and is more particularly identified on Tax Map 44, Grid 2C, Parcel 197. The subject parcel consists of 34.801 acres, is zoned AG and is located entirely within the Second Election District.

Mr. Brian Stover appeared on behalf of the Applicant. A communication tower at this location was approved pursuant to Board of Appeals Case No. 3120 in 1984. A communication tower 154.5 feet in height was erected on the site pursuant to a validly issued building permit. Unfortunately, an error on the site plan was made and the tower was located closer to the property line than it should have been; therefore, a 20 foot modification to Condition No. 2 of Case 3120 is requested. Condition No. 2 required that the setback be, at a minimum, the height of the tower plus 10 feet. The tower has been at its present location for 13 ½ years. Bell has entered into an agreement with the adjacent property owner wherein the parties mutually agree that the present tower location is acceptable.

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Mr. Kevin McBride appeared and qualified as an expert landscape architect and site planner. He explained that the setback requirements set forth in the Code are designed for safety, allowing a non-incidental fall radius in case the tower should accidentally come down. Even though the tower is closer to the property line than the Code allows, the witness explained that it is nonetheless in a safe location since there are no structures anywhere in the immediate vicinity that would be endangered if the tower fell. The witness described the parcel as unique, falling off rapidly in elevation. In order to maintain effectiveness, if the tower were pulled away from the property line, it would have to be increased in height because of the topography. Additionally, dismantling and re-erecting the tower would be noisy, obtrusive and costly. The witness indicated that no adverse impacts would result if the tower is left in its present location.

The Department of Planning and Zoning agrees that the tower was inadvertently located in the wrong position. The Staff Report dated November 3, 1998 indicates that the Department is of the opinion that allowing the tower to remain at its present location would not be detrimental to adjacent properties nor would the purposes of the Code be impaired. There were no persons who appeared in opposition to the request.

CONCLUSION:

A special exception to erect a communication tower was granted in Case No. 3120. Due to an error, the tower was not positioned on the parcel in a way that allows compliance with the conditions imposed by the Hearing Examiner as to the required setback. Based on the evidence presented, it does not appear that allowing the tower to remain in its present location would pose any risk of danger to adjacent property or structures, this, the intent of the Code would not be impaired by allowing the tower to remain in its present location. Certainly an unreasonable hardship would result if the Applicant were forced to bear the cost of dismantling and re-erecting the tower at another location.

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The Hearing Examiner recommends that the Applicant's request to modify Condition No. 2 be granted, subject to the condition that the Applicant shall be responsible for any and all damage that might be caused to adjacent properties if the tower were to fall.

Date DECEMBER 7, 1998

William F. Casey
Zoning Hearing Examiner